

**ARTICLE IV**

**DISCIPLINE**

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The purpose of this Article is to supplement the disciplinary action the Police Merit Commission may take as set forth in I.C. 36-8-3.5-17 through 19.

### **A. Offenses Which Require Disciplinary Action.**

(1) Offenses. I.C. 36-8-3.5-17(b) states that disciplinary action may be taken for the following offenses:

- a) conviction of a crime;
- b) neglect of duty: This offense is defined in Article III.E.(15) of these rules and regulations;
- c) neglect or disobedience of orders: This offense is defined in Article III. E. (7) of these rules and regulations;
- d) continuing incapacity;
- e) absence without leave: This offense is defined in Article III.E.(14) of these rules and regulations;
- f) immoral conduct: This offense is defined in Article III.E.(54) of these rules and regulations;
- g) conduct injurious to the public peace or welfare;
- h) conduct unbecoming a member: This offense is defined in Article III.E.(1) of these rules and regulations.
- i) furnishing information to an applicant for appointment or promotion that gives that person an advantage over another applicant; or
- j) a finding of a breach of the rules of conduct as set forth in Article III of these Rules and Regulations.

B. Disciplinary Action by the Commission. Pursuant to I.C. 36-8-3.5-17(a), the Commission may take the following disciplinary action against a regular member of the department:

- (1) Actions Available.
- a) Suspension with or without pay;
  - b) Demotion; or

c) Dismissal;

(2) Remuneration. If a member is suspended, that member is entitled to the member's remuneration and allowances for insurance benefits to which the member was entitled before the suspension. In the event the City of West Lafayette is providing other fringe benefits to the suspended member, the City may continue to provide those benefits. The Commission shall determine if a member who is suspended in excess of five (5) days shall continue to receive the member's salary during the suspension.

(3) Fair Administration. All discipline shall be administered firmly, promptly, fairly and judiciously. In no event shall personal bias or discrimination affect the handling of disciplinary matters.

C. Procedures for Disciplinary Action. Pursuant to I.C. 36-8-3.5-17(c), the procedure for charging a member with a violation of this Article IV(A) is as follows:

(1) Charges and Hearing. If the Chief, after an internal investigation, prefers charges against a member for an alleged breach of departmental rules and regulations (including any civilian complaints for an alleged breach of Subsections (A)(1)(f), (A)(1)(g) or (A)(1)(h)), a hearing shall be conducted AT THE REQUEST OF THE MEMBER CHARGED.

a) Within five (5) days of requesting a hearing, the parties (being the officer charged and the Chief of police) may designate, by agreement, a hearing officer. Said hearing officer must be qualified by education, training or experience.

b) If the parties do not agree with this five (5) day period, the Commission may hold the hearing.

c) The Commission may, in its discretion, designate a person or board, who is qualified by education, training, or experience, to conduct the hearing. Such person or board may not be in an upper level policy making position.

d) The hearing must be held within thirty (30) days of the member's request. Continuations of the hearing may be granted by the Commission for good cause.

e) If the member fails to request a hearing within five (5) days of the charges being preferred, the Commission shall review the findings of the Chief and take disciplinary action against the member under Section B(1).

(2) Notice. Notice of a hearing shall be in writing and served upon the member charged either by personal service or by leaving a copy of the notice at the member's last and usual place of residence. The notice shall be given at least fourteen (14) days prior to the date set for the hearing.

- a) The notice must state the following:
  - (i) the time and place of the hearing;
  - (ii) the charges against the member;
  - (iii) the specific conduct that comprises the charges;
  - (iv) that the member is entitled to be represented by counsel or another representative of the member's choice;
  - (v) that the member is entitled to call and cross-examine witness;
  - (vi) that the member is entitled to require the production of evidence; and
  - (vii) that the member is entitled to have subpoenas issued, served, and executed.
- b) The Commission may:
  - (i) compel the attendance of witnesses by issuing subpoenas;
  - (ii) examine witnesses under oath; and
  - (iii) order the production of books, papers, and other evidence by issuing subpoenas.

(3) Refusal to Cooperate. If a witness refuses to appear at the hearing after receiving written notice requiring his attendance, or refuses to produce evidence that the Commission requests by written notice, the Commission may file an affidavit in the Tippecanoe Circuit Court setting forth the facts of the refusal. The Judge of the Tippecanoe Circuit Court shall issue a summons for service by the Sheriff of Tippecanoe County requiring the appearance of the witness or the production of information or evidence.

a) Contempt. Disobedience of the summons constitutes contempt of the Tippecanoe Circuit Court. Expenses for the filing of the affidavit and issuance of the summons shall be charged to the witness, unless the Court finds that the witness acted in good faith and with reasonable cause. Otherwise all expenses shall be charged to the Commission.

(4) Burden of Proof. Any decision to discipline a member shall be made only if the preponderance of the evidence presented at the hearing indicates such course of action.

(5) Review. In the event a hearing was conducted by a hearing officer or board, other than the Commission, the member may appeal any decision by said hearing officer or board to the Commission within ten (10) days of the decision.

The Commission may then affirm, modify, or reverse the decision based upon the record and any oral or written testimony (including additional or newly discovered evidence) that the commission determines.

(6) Records of Hearings. The Commission (including any hearing officer or board) shall keep a record of any disciplinary proceedings. The Commission shall give a free copy of the transcript to the member upon request if an appeal is filed.

D. Summary Discipline.

(1) Actions of Chief. Pursuant to I.C. 36-8-3.5-19, the Chief may, without a hearing, choose to summarily discipline a member, which discipline may include an oral reprimand, a reprimand in writing, or suspend without pay for a maximum of five (5) working days. One (1) day shall be equal to eight (8) hours of paid time.

(2) Commission Notification. If the Chief reprimands a member in writing or suspends a member, then, within forty-eight (48) hours, the Commission shall be notified in writing of the following:

- a) member's name;
- b) member's rank;
- c) discipline imposed;
- d) the reasons for the discipline imposed.

(3) Review Request. A member who is reprimanded or suspended may request, in writing, within forty-eight (48) hours of notification of the summary discipline, that the Commission review the summary discipline. The Commission may either affirm or reverse the Chief's decision.

(4) Hearing on Summary Discipline. The Commission may hold a hearing, at its discretion, to review the Chief's summary disciplinary actions. If a hearing is held, the Commission shall give the member written notice of the hearing either by personal service or by leaving a copy of the notice at the member's last and usual place of residence. The notice shall be given at least fourteen (14) days before the date set for the hearing and shall contain all of the provisions of Subsection C (2) above.

(5) Back Wages. If the Commission reverses the actions of the Chief, the member who was suspended is entitled to any wages withheld as a result of the suspension.

E. Appeals to the Court. Pursuant to I.C. 36-8-3.5-18, a member has the following rights with regard to a decision of the Commission:

(1) Right of Appeal. If a member is suspended for more than ten (10) calendar days, demoted, or dismissed by the Commission, that member may appeal the Commission's decision to the Circuit or Superior Court of Tippecanoe County.

(2) Indiana Trial Rules. All appeals to the court shall be filed according to the Indiana Rules of Court except:

a) the appeal must be verified and filed within thirty (30) days of the Commission's decision;

b) the City of West Lafayette shall be the sole defendant;

c) the City of West Lafayette is assumed to deny all allegations and does not need to file a responsive pleading;

d) the member must file a bond at the time of filing the appeal conditioned on the member prosecuting the appeal to a final determination and paying the court costs incurred in the appeal;

e) the Commission shall file a transcript of all papers, entries, and other parts of the record relating to the case within thirty (30) days after service of summons.

(3) Priority. The appeal shall take precedence over other litigation pending before the court.

F. Precedence. In the event Indiana statute is in conflict with any rules of the Commission, the Indiana statute shall take precedence.